

Senate File 463 - Introduced

SENATE FILE 463
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 1185)

A BILL FOR

1 An Act establishing the occupational therapy licensure compact.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147E.1 Occupational therapy
2 licensure compact.

3 1. *Purpose.* The purpose of this compact is to facilitate
4 interstate practice of occupational therapy with the goal of
5 improving public access to occupational therapy services. The
6 practice of occupational therapy occurs in the state where
7 the patient or client is located at the time of the patient
8 or client encounter. The compact preserves the regulatory
9 authority of the states to protect public health and safety
10 through the current system of state licensure. This compact is
11 designed to achieve the following objectives:

12 *a.* Increase public access to occupational therapy services
13 by providing for the mutual recognition of other member state
14 licenses.

15 *b.* Enhance the states' ability to protect the public's
16 health and safety.

17 *c.* Encourage the cooperation of member states in regulating
18 multistate occupational therapy practice.

19 *d.* Support spouses of relocating military members.

20 *e.* Enhance the exchange of licensure, investigative, and
21 disciplinary information between member states.

22 *f.* Allow a remote state to hold a provider of services with
23 a compact privilege in that state accountable to that state's
24 practice standards.

25 *g.* Facilitate the use of telehealth technology in order to
26 increase access to occupational therapy services.

27 2. *Definitions.* As used in this compact, and except as
28 otherwise provided, the following definitions shall apply:

29 *a.* "*Active duty military*" means full-time duty status in
30 the active uniformed service of the United States, including
31 members of the national guard and reserve on active duty orders
32 pursuant to 10 U.S.C. ch. 1209 or 1211, respectively.

33 *b.* "*Adverse action*" means any administrative, civil,
34 equitable, or criminal action permitted by a state's laws which
35 is imposed by a licensing board or other authority against

1 an occupational therapist or occupational therapy assistant,
2 including actions against an individual's license or compact
3 privilege such as censure, revocation, suspension, probation,
4 monitoring of the licensee, or restriction on the licensee's
5 practice.

6 *c. "Alternative program"* means a nondisciplinary monitoring
7 process approved by an occupational therapy licensing board.

8 *d. "Compact privilege"* means the authorization, which
9 is equivalent to a license, granted by a remote state to
10 allow a licensee from another member state to practice as an
11 occupational therapist or practice as an occupational therapy
12 assistant in the remote state under its laws and rules. The
13 practice of occupational therapy occurs in the member state
14 where the patient or client is located at the time of the
15 patient or client encounter.

16 *e. "Continuing competence or education"* means a requirement,
17 as a condition of license renewal, to provide evidence
18 of participation in, and completion of, educational and
19 professional activities relevant to the practice or area of
20 work.

21 *f. "Current significant investigative information"* means
22 investigative information that a licensing board, after an
23 inquiry or investigation that includes notification and an
24 opportunity for the occupational therapist or occupational
25 therapy assistant to respond, if required by state law, has
26 reason to believe is not groundless and, if proved true, would
27 indicate more than a minor infraction.

28 *g. "Data system"* means a repository of information about
29 licensees, including but not limited to license status,
30 investigative information, compact privileges, and adverse
31 actions.

32 *h. "Encumbered license"* means a license in which an adverse
33 action restricts the practice of occupational therapy by the
34 licensee or said adverse action has been reported to the
35 national practitioners data bank.

- 1 *i. "Executive committee"* means a group of directors elected
2 or appointed to act on behalf of, and within the powers granted
3 to them by, the commission.
- 4 *j. "Home state"* means the member state that is the
5 licensee's primary state of residence.
- 6 *k. "Impaired practitioner"* means individuals whose
7 professional practice is adversely affected by substance abuse,
8 addiction, or other health-related conditions.
- 9 *l. "Investigative information"* means information, records,
10 or documents received or generated by an occupational therapy
11 licensing board pursuant to an investigation.
- 12 *m. "Jurisprudence requirement"* means the assessment of an
13 individual's knowledge of the laws and rules governing the
14 practice of occupational therapy in a state.
- 15 *n. "Licensee"* means an individual who currently holds an
16 authorization from the state to practice as an occupational
17 therapist or as an occupational therapy assistant.
- 18 *o. "Member state"* means a state that has enacted the
19 compact.
- 20 *p. "Occupational therapist"* means an individual who is
21 licensed by a state to practice occupational therapy.
- 22 *q. "Occupational therapy", "occupational therapy practice",*
23 *and "practice of occupational therapy"* mean the care and
24 services provided by an occupational therapist or an
25 occupational therapy assistant as set forth in the member
26 state's statutes and regulations.
- 27 *r. "Occupational therapy assistant"* means an individual
28 who is licensed by a state to assist in the practice of
29 occupational therapy.
- 30 *s. "Occupational therapy compact commission" or "commission"*
31 means the national administrative body whose membership
32 consists of all states that have enacted the compact.
- 33 *t. "Occupational therapy licensing board" or "licensing*
34 *board"* means the agency of a state that is authorized to license
35 and regulate occupational therapists and occupational therapy

1 assistants.

2 u. "*Primary state of residence*" or "*home state*" means the
3 state in which an occupational therapist or occupational
4 therapy assistant who is not active duty military declares a
5 primary residence for legal purposes as verified by a driver's
6 license, federal income tax return, lease, deed, mortgage,
7 voter registration, or other verifying documentation as further
8 defined by commission rules.

9 v. "*Remote state*" means a member state other than the home
10 state, where a licensee is exercising or seeking to exercise
11 the compact privilege.

12 w. "*Rule*" means a regulation promulgated by the commission
13 that has the force of law.

14 x. "*Single-state license*" means an occupational therapist or
15 occupational therapy assistant license issued by a member state
16 that authorizes practice only within the issuing state and does
17 not include a compact privilege in any other member state.

18 y. "*State*" means any state, commonwealth, district, or
19 territory of the United States that regulates the practice of
20 occupational therapy.

21 z. "*Telehealth*" means the application of telecommunication
22 technology to deliver occupational therapy services for
23 assessment, intervention, or consultation.

24 3. *State participation in the compact.*

25 a. To participate in the compact, a member state shall do
26 all of the following:

27 (1) License occupational therapists and occupational
28 therapy assistants.

29 (2) Participate fully in the commission's data system,
30 including but not limited to using the commission's unique
31 identifier as defined in rules of the commission.

32 (3) Have a mechanism in place for receiving and
33 investigating complaints about licensees.

34 (4) Notify the commission, in compliance with the terms
35 of the compact and rules, of any adverse action or the

1 availability of investigative information regarding a licensee.

2 (5) Implement or utilize procedures for considering the
3 criminal history records of applicants for an initial compact
4 privilege. These procedures shall include the submission of
5 fingerprints or other biometric-based information by applicants
6 for the purpose of obtaining an applicant's criminal history
7 record information from the federal bureau of investigation
8 and the agency responsible for retaining that state's criminal
9 records.

10 (a) A member state shall, within a time frame established
11 by the commission, require a criminal background check for a
12 licensee seeking or applying for a compact privilege whose
13 primary state of residence is that member state, by receiving
14 the results of the federal bureau of investigation criminal
15 record search, and shall use the results in making licensure
16 decisions.

17 (b) Communication between a member state, the commission,
18 and among member states regarding the verification of
19 eligibility for licensure through the compact shall not
20 include any information received from the federal bureau of
21 investigation relating to a federal criminal records check
22 performed by a member state under Pub. L. No. 92-544.

23 (6) Comply with the rules of the commission.

24 (7) Utilize only a recognized national examination as
25 a requirement for licensure pursuant to the rules of the
26 commission.

27 (8) Have continuing competence or education requirements as
28 a condition for license renewal.

29 *b.* A member state shall grant the compact privilege to
30 a licensee holding a valid, unencumbered license in another
31 member state in accordance with the terms of the compact and
32 rules.

33 *c.* A member state may charge a fee for granting a compact
34 privilege.

35 *d.* A member state shall provide for the state's delegate to

1 attend all occupational therapy compact commission meetings.

2 *e.* Individuals not residing in a member state shall continue
3 to be able to apply for a member state's single-state license
4 as provided under the laws of each member state. However, the
5 single-state license granted to these individuals shall not
6 be recognized as granting the compact privilege in any other
7 member state.

8 *f.* Nothing in this compact shall affect the requirements
9 established by a member state for the issuance of a
10 single-state license.

11 4. *Compact privilege.*

12 *a.* To exercise the compact privilege under the terms and
13 provisions of the compact, the licensee shall do all of the
14 following:

15 (1) Hold a license in the home state.

16 (2) Have a valid United States social security number or
17 national practitioner identification number.

18 (3) Have no encumbrance on any state license.

19 (4) Be eligible for a compact privilege in any member state
20 in accordance with paragraphs "d", "f", "g", and "h".

21 (5) Have paid all fines and completed all requirements
22 resulting from any adverse action against any license or
23 compact privilege, and two years have elapsed from the date of
24 such completion.

25 (6) Notify the commission that the licensee is seeking the
26 compact privilege within a remote state.

27 (7) Pay any applicable fees, including any state fee, for
28 the compact privilege.

29 (8) Complete a criminal background check in accordance with
30 subsection 3, paragraph "a", subparagraph (5). The licensee
31 shall be responsible for the payment of any fee associated with
32 the completion of a criminal background check.

33 (9) Meet any jurisprudence requirements established by
34 the remote state in which the licensee is seeking a compact
35 privilege.

1 (10) Report to the commission adverse action taken by any
2 nonmember state within thirty days from the date the adverse
3 action is taken.

4 *b.* The compact privilege is valid until the expiration date
5 of the home state license. The licensee must comply with the
6 requirements of paragraph "a" to maintain the compact privilege
7 in the remote state.

8 *c.* A licensee providing occupational therapy in a remote
9 state under the compact privilege shall function within the
10 laws and regulations of the remote state.

11 *d.* Occupational therapy assistants practicing in a remote
12 state shall be supervised by an occupational therapist licensed
13 or holding a compact privilege in that remote state.

14 *e.* A licensee providing occupational therapy in a remote
15 state is subject to that state's regulatory authority. A
16 remote state may, in accordance with due process and that
17 state's laws, remove a licensee's compact privilege in the
18 remote state for a specific period of time, impose fines, or
19 take any other necessary actions to protect the health and
20 safety of its citizens. The licensee may be ineligible for
21 a compact privilege in any state until the specific time for
22 removal has passed and all fines are paid.

23 *f.* If a home state license is encumbered, the licensee shall
24 lose the compact privilege in any remote state until all of the
25 following occur:

26 (1) The home state license is no longer encumbered.

27 (2) Two years have elapsed from the date on which the
28 home state license is no longer encumbered in accordance with
29 subparagraph (1).

30 *g.* Once an encumbered license in the home state is restored
31 to good standing, the licensee must meet the requirements of
32 paragraph "a" to obtain a compact privilege in any remote state.

33 *h.* If a licensee's compact privilege in any remote state is
34 removed, the individual may lose the compact privilege in any
35 other remote state until all of the following occur:

1 (1) The specific period of time for which the compact
2 privilege was removed has ended.

3 (2) All fines have been paid and all conditions have been
4 met.

5 (3) Two years have elapsed from the date of completing the
6 requirements of subparagraphs (1) and (2).

7 (4) The compact privilege is reinstated by the
8 commission, and the compact data system is updated to reflect
9 reinstatement.

10 *i.* If a licensee's compact privilege in any remote state
11 is removed due to an erroneous charge, privileges shall be
12 restored through the compact data system.

13 *j.* Once the requirements of paragraph "h" have been met, the
14 licensee must meet the requirements of paragraph "a" to obtain a
15 compact privilege in a remote state.

16 5. *Obtaining a new home state license by virtue of compact*
17 *privilege.*

18 *a.* An occupational therapist or occupational therapy
19 assistant may hold a home state license, which allows for
20 compact privileges in member states, in only one member state
21 at a time.

22 *b.* If an occupational therapist or occupational therapy
23 assistant changes primary state of residence by moving between
24 two member states:

25 (1) The occupational therapist or occupational therapy
26 assistant shall file an application for obtaining a new
27 home state license by virtue of a compact privilege, pay all
28 applicable fees, and notify the current and new home state in
29 accordance with applicable rules adopted by the commission.

30 (2) Upon receipt of an application for obtaining a new
31 home state license by virtue of compact privilege, the new
32 home state shall verify that the occupational therapist or
33 occupational therapy assistant meets the pertinent criteria
34 outlined in subsection 4 via the data system, without the
35 need for primary source verification except for all of the

1 following:

2 (a) A federal bureau of investigation fingerprint-based
3 criminal background check if not previously performed or
4 updated pursuant to applicable rules adopted by the commission
5 in accordance with Pub. L. No. 92-544.

6 (b) Any other criminal background check as required by the
7 new home state.

8 (c) Submission of any requisite jurisprudence requirements
9 of the new home state.

10 (3) The former home state shall convert the former home
11 state license into a compact privilege once the new home state
12 has activated the new home state license in accordance with
13 applicable rules adopted by the commission.

14 (4) Notwithstanding any other provision of this compact, if
15 the occupational therapist or occupational therapy assistant
16 cannot meet the criteria in subsection 4, the new home state
17 shall apply its requirements for issuing a new single-state
18 license.

19 (5) The occupational therapist or the occupational therapy
20 assistant shall pay all applicable fees to the new home state
21 in order to be issued a new home state license.

22 c. If an occupational therapist or occupational therapy
23 assistant changes primary state of residence by moving from a
24 member state to a nonmember state, or from a nonmember state to
25 a member state, the state criteria shall apply for issuance of
26 a single-state license in the new state.

27 d. Nothing in this compact shall interfere with a licensee's
28 ability to hold a single-state license in multiple states;
29 however, for the purposes of this compact, a licensee shall
30 have only one home state license.

31 e. Nothing in this compact shall affect the requirements
32 established by a member state for the issuance of a
33 single-state license.

34 6. *Active duty military personnel or their spouses.* Active
35 duty military personnel, or their spouses, shall designate a

1 home state where the individual has a current license in good
2 standing. The individual may retain the home state designation
3 during the period the service member is on active duty.
4 Subsequent to designating a home state, the individual shall
5 only change their home state through application for licensure
6 in the new state or through the process described in subsection
7 5.

8 7. *Adverse actions.*

9 a. A home state shall have exclusive power to impose adverse
10 action against an occupational therapist's or occupational
11 therapy assistant's license issued by the home state.

12 b. In addition to the other powers conferred by state law,
13 a remote state shall have the authority, in accordance with
14 existing state due process law, to do all of the following:

15 (1) Take adverse action against an occupational therapist's
16 or occupational therapy assistant's compact privilege within
17 that member state.

18 (2) Issue subpoenas for both hearings and investigations
19 that require the attendance and testimony of witnesses as well
20 as the production of evidence. Subpoenas issued by a licensing
21 board in a member state for the attendance and testimony of
22 witnesses or the production of evidence from another member
23 state shall be enforced in the latter state by any court of
24 competent jurisdiction, according to the practice and procedure
25 of that court applicable to subpoenas issued in proceedings
26 pending before it. The issuing authority shall pay any witness
27 fees, travel expenses, mileage, and other fees required by the
28 service statutes of the state where the witnesses or evidence
29 are located.

30 c. For purposes of taking adverse action, the home state
31 shall give the same priority and effect to reported conduct
32 received from a member state as it would if the conduct had
33 occurred within the home state. In so doing, the home state
34 shall apply its own state laws to determine appropriate action.

35 d. The home state shall complete any pending investigations

1 of an occupational therapist or occupational therapy assistant
2 who changes primary state of residence during the course of the
3 investigations. The home state where the investigations were
4 initiated shall also have the authority to take appropriate
5 action and shall promptly report the conclusions of the
6 investigations to the occupational therapy compact commission
7 data system. The occupational therapy compact commission data
8 system administrator shall promptly notify the new home state
9 of any adverse actions.

10 *e.* A member state, if otherwise permitted by state law,
11 may recover from the affected occupational therapist or
12 occupational therapy assistant the costs of investigations and
13 disposition of cases resulting from any adverse action taken
14 against that occupational therapist or occupational therapy
15 assistant.

16 *f.* A member state may take adverse action based on the
17 factual findings of the remote state, provided that the member
18 state follows its own procedures for taking the adverse action.

19 *g. Joint investigations.*

20 (1) In addition to the authority granted to a member
21 state by its respective state occupational therapy laws and
22 regulations or other applicable state law, any member state may
23 participate with other member states in joint investigations
24 of licensees.

25 (2) Member states shall share any investigative,
26 litigation, or compliance materials in furtherance of any joint
27 or individual investigation initiated under the compact.

28 *h.* If an adverse action is taken by the home state against
29 an occupational therapist's or occupational therapy assistant's
30 license, the occupational therapist's or occupational therapy
31 assistant's compact privilege in all other member states shall
32 be deactivated until all encumbrances have been removed from
33 the state license. All home state disciplinary orders that
34 impose adverse action against an occupational therapist's
35 or occupational therapy assistant's license shall include a

1 statement that the occupational therapist's or occupational
2 therapy assistant's compact privilege is deactivated in all
3 member states during the pendency of the order.

4 *i.* If a member state takes adverse action, it shall promptly
5 notify the administrator of the data system. The administrator
6 of the data system shall promptly notify the home state of any
7 adverse actions by remote states.

8 *j.* Nothing in this compact shall override a member state's
9 decision that participation in an alternative program may be
10 used in lieu of adverse action.

11 8. *Establishment of the occupational therapy compact*
12 *commission.*

13 *a.* The compact member states hereby create and establish a
14 joint public agency known as the occupational therapy compact
15 commission.

16 (1) The commission is an instrumentality of the compact
17 states.

18 (2) Venue is proper and judicial proceedings by or against
19 the commission shall be brought solely and exclusively in a
20 court of competent jurisdiction where the principal office of
21 the commission is located. The commission may waive venue and
22 jurisdictional defenses to the extent it adopts or consents to
23 participate in alternative dispute resolution proceedings.

24 (3) Nothing in this compact shall be construed to be a
25 waiver of sovereign immunity.

26 *b. Membership, voting, and meetings.*

27 (1) Each member state shall have and be limited to one
28 delegate selected by that member state's licensing board.

29 (2) The delegate shall be either of the following:

30 (a) A current member of the licensing board who is an
31 occupational therapist, occupational therapy assistant, or
32 public member.

33 (b) An administrator of the licensing board.

34 (3) Any delegate may be removed or suspended from office
35 as provided by the law of the state from which the delegate is

1 appointed.

2 (4) The member state board shall fill any vacancy occurring
3 in the commission within ninety days of the vacancy.

4 (5) Each delegate shall be entitled to one vote with regard
5 to the promulgation of rules and creation of bylaws and shall
6 otherwise have an opportunity to participate in the business
7 and affairs of the commission. A delegate shall vote in
8 person or by such other means as provided in the bylaws. The
9 bylaws may provide for delegates' participation in meetings by
10 telephone or other means of communication.

11 (6) The commission shall meet at least once during each
12 calendar year. Additional meetings shall be held as set forth
13 in the bylaws.

14 (7) The commission shall establish by rule a term of office
15 for delegates.

16 c. The commission shall have the following powers and
17 duties:

18 (1) Establish a code of ethics for the commission.

19 (2) Establish the fiscal year of the commission.

20 (3) Establish bylaws.

21 (4) Maintain its financial records in accordance with the
22 bylaws.

23 (5) Meet and take such actions as are consistent with the
24 provisions of this compact and the bylaws.

25 (6) Promulgate uniform rules to facilitate and coordinate
26 implementation and administration of this compact. The rules
27 shall have the force and effect of law and shall be binding in
28 all member states.

29 (7) Bring and prosecute legal proceedings or actions in the
30 name of the commission, provided that the standing of any state
31 occupational therapy licensing board to sue or be sued under
32 applicable law shall not be affected.

33 (8) Purchase and maintain insurance and bonds.

34 (9) Borrow, accept, or contract for services of personnel,
35 including but not limited to employees of a member state.

1 (10) Hire employees, elect or appoint officers, fix
2 compensation, define duties, grant such individuals appropriate
3 authority to carry out the purposes of the compact, and
4 establish the commission's personnel policies and programs
5 relating to conflicts of interest, qualifications of personnel,
6 and other related personnel matters.

7 (11) Accept any and all appropriate donations and grants
8 of money, equipment, supplies, materials, and services, and
9 receive, utilize, and dispose of the same; provided that at all
10 times the commission shall avoid any appearance of impropriety
11 or conflict of interest.

12 (12) Lease, purchase, accept appropriate gifts or donations
13 of, or otherwise own, hold, improve, or use, any property,
14 whether real, personal, or mixed; provided that at all times
15 the commission shall avoid any appearance of impropriety.

16 (13) Sell, convey, mortgage, pledge, lease, exchange,
17 abandon, or otherwise dispose of any property real, personal,
18 or mixed.

19 (14) Establish a budget and make expenditures.

20 (15) Borrow money.

21 (16) Appoint committees, including standing committees
22 composed of members, state regulators, state legislators or
23 their representatives, consumer representatives, and such other
24 interested persons as may be designated in this compact and the
25 bylaws.

26 (17) Provide and receive information from, and cooperate
27 with, law enforcement agencies.

28 (18) Establish and elect an executive committee.

29 (19) Perform such other functions as may be necessary or
30 appropriate to achieve the purposes of this compact consistent
31 with the state regulation of occupational therapy licensure and
32 practice.

33 *d. The executive committee.* The executive committee shall
34 have the power to act on behalf of the commission according to
35 the terms of this compact.

1 (1) The executive committee shall be composed of the
2 following nine members:

3 (a) Seven voting members who are elected by the commission
4 from the current membership of the commission.

5 (b) One ex officio, nonvoting member from a recognized
6 national occupational therapy professional association.

7 (c) One ex officio, nonvoting member from a recognized
8 national occupational therapy certification organization.

9 (2) The ex officio members will be selected by their
10 respective organizations.

11 (3) The commission may remove any member of the executive
12 committee as provided in bylaws.

13 (4) The executive committee shall meet at least annually.

14 (5) The executive committee shall have the following duties
15 and responsibilities:

16 (a) Recommend to the entire commission changes to the rules
17 or bylaws, changes to this compact, fees paid by compact member
18 states such as annual dues, and any commission compact fee
19 charged to licensees for the compact privilege.

20 (b) Ensure compact administration services are
21 appropriately provided, contractual or otherwise.

22 (c) Prepare and recommend the budget.

23 (d) Maintain financial records on behalf of the commission.

24 (e) Monitor compact compliance of member states and provide
25 compliance reports to the commission.

26 (f) Establish additional committees as necessary.

27 (g) Perform other duties as provided in rules or bylaws.

28 *e. Meetings of the commission.*

29 (1) All meetings shall be open to the public, and public
30 notice of meetings shall be given in the same manner as
31 required under the rulemaking provisions in subsection 10.

32 (2) The commission or the executive committee or other
33 committees of the commission may convene in a closed, nonpublic
34 meeting if the commission or executive committee or other
35 committees of the commission must discuss any of the following:

1 (a) Noncompliance of a member state with its obligations
2 under the compact.

3 (b) The employment, compensation, discipline, or other
4 matters, practices, or procedures related to specific employees
5 or other matters related to the commission's internal personnel
6 practices and procedures.

7 (c) Current, threatened, or reasonably anticipated
8 litigation.

9 (d) Negotiation of contracts for the purchase, lease, or
10 sale of goods, services, or real estate.

11 (e) Accusing any person of a crime or formally censuring any
12 person.

13 (f) Disclosure of trade secrets or commercial or financial
14 information that is privileged or confidential.

15 (g) Disclosure of information of a personal nature where
16 disclosure would constitute a clearly unwarranted invasion of
17 personal privacy.

18 (h) Disclosure of investigative records compiled for law
19 enforcement purposes.

20 (i) Disclosure of information related to any investigative
21 reports prepared by, on behalf of, or for use of the commission
22 or other committee charged with the responsibility of
23 investigation or determination of compliance issues pursuant
24 to the compact.

25 (j) Matters specifically exempted from disclosure by
26 federal or member state statute.

27 (3) If a meeting, or portion of a meeting, is closed
28 pursuant to this provision, the commission's legal counsel or
29 designee shall certify that the meeting may be closed and shall
30 reference each relevant exempting provision.

31 (4) The commission shall keep minutes that fully and clearly
32 describe all matters discussed in a meeting and shall provide
33 a full and accurate summary of actions taken, and the reasons
34 therefore, including a description of the views expressed.
35 All documents considered in connection with an action shall

1 be identified in such minutes. All minutes and documents of
2 a closed meeting shall remain under seal, subject to release
3 by a majority vote of the commission or order of a court of
4 competent jurisdiction.

5 *f. Financing of the commission.*

6 (1) The commission shall pay, or provide for the payment of,
7 the reasonable expenses of its establishment, organization, and
8 ongoing activities.

9 (2) The commission may accept any and all appropriate
10 revenue sources, donations, and grants of money, equipment,
11 supplies, materials, and services.

12 (3) The commission may levy on and collect an annual
13 assessment from each member state or impose fees on other
14 parties to cover the cost of the operations and activities
15 of the commission and its staff, which must be in a total
16 amount sufficient to cover its annual budget as approved by
17 the commission each year for which revenue is not provided by
18 other sources. The aggregate annual assessment amount shall
19 be allocated based upon a formula to be determined by the
20 commission, which shall promulgate a rule binding upon all
21 member states.

22 (4) The commission shall not incur obligations of any kind
23 prior to securing the funds adequate to meet the same; nor
24 shall the commission pledge the credit of any of the member
25 states, except by and with the authority of the member state.

26 (5) The commission shall keep accurate accounts of all
27 receipts and disbursements. The receipts and disbursements of
28 the commission shall be subject to the audit and accounting
29 procedures established under its bylaws. However, all receipts
30 and disbursements of funds handled by the commission shall be
31 audited yearly by a certified or licensed public accountant,
32 and the report of the audit shall be included in and become
33 part of the annual report of the commission.

34 *g. Qualified immunity, defense, and indemnification.*

35 (1) The members, officers, executive director, employees,

1 and representatives of the commission shall be immune from
2 suit and liability, either personally or in their official
3 capacity, for any claim for damage to or loss of property or
4 personal injury or other civil liability caused by or arising
5 out of any actual or alleged act, error, or omission that
6 occurred, or that the person against whom the claim is made had
7 a reasonable basis for believing occurred within the scope of
8 commission employment, duties, or responsibilities; provided
9 that nothing in this paragraph shall be construed to protect
10 any such person from suit or liability for any damage, loss,
11 injury, or liability caused by the intentional, willful, or
12 wanton misconduct of that person.

13 (2) The commission shall defend any member, officer,
14 executive director, employee, or representative of the
15 commission in any civil action seeking to impose liability
16 arising out of any actual or alleged act, error, or omission
17 that occurred within the scope of commission employment,
18 duties, or responsibilities, or that the person against
19 whom the claim is made had a reasonable basis for believing
20 occurred within the scope of commission employment, duties,
21 or responsibilities; provided that nothing herein shall be
22 construed to prohibit that person from retaining the person's
23 own counsel; and provided further, that the actual or alleged
24 act, error, or omission did not result from that person's
25 intentional, willful, or wanton misconduct.

26 (3) The commission shall indemnify and hold harmless
27 any member, officer, executive director, employee, or
28 representative of the commission for the amount of any
29 settlement or judgment obtained against that person arising
30 out of any actual or alleged act, error, or omission that
31 occurred within the scope of commission employment, duties,
32 or responsibilities, or that such person had a reasonable
33 basis for believing occurred within the scope of commission
34 employment, duties, or responsibilities; provided that the
35 actual or alleged act, error, or omission did not result from

1 the intentional, willful, or wanton misconduct of that person.

2 9. *Data system.*

3 a. The commission shall provide for the development,
4 maintenance, and utilization of a coordinated database and
5 reporting system containing licensure, adverse action, and
6 investigative information on all licensed individuals in member
7 states.

8 b. A member state shall submit a uniform data set to
9 the data system on all individuals to whom this compact is
10 applicable, utilizing a unique identifier, as required by the
11 rules of the commission, including all of the following:

12 (1) Identifying information.

13 (2) Licensure data.

14 (3) Adverse actions against a license or compact privilege.

15 (4) Nonconfidential information related to alternative
16 program participation.

17 (5) Any denial of application for licensure, and the reason
18 for such denial.

19 (6) Other information that may facilitate the
20 administration of this compact, as determined by the rules of
21 the commission.

22 (7) Current significant investigative information.

23 c. Current significant investigative information and other
24 investigative information pertaining to a licensee in any
25 member state will only be available to other member states.

26 d. The commission shall promptly notify all member states of
27 any adverse action taken against a licensee or an individual
28 applying for a license. Adverse action information pertaining
29 to a licensee in any member state will be available to any
30 other member state.

31 e. Member states contributing information to the data
32 system may designate information that may not be shared with
33 the public without the express permission of the contributing
34 state.

35 f. Any information submitted to the data system that is

1 subsequently required to be expunged by the laws of the member
2 state contributing the information shall be removed from the
3 data system.

4 10. *Rulemaking.*

5 a. The commission shall exercise its rulemaking powers
6 pursuant to the criteria set forth in this subsection and the
7 rules adopted thereunder. Rules and amendments shall become
8 binding as of the date specified in each rule or amendment.

9 b. The commission shall promulgate reasonable rules in
10 order to effectively and efficiently achieve the purposes of
11 the compact. Notwithstanding the foregoing, in the event the
12 commission exercises its rulemaking authority in a manner that
13 is beyond the scope of the purposes of the compact, or the
14 powers granted hereunder, then such an action by the commission
15 shall be invalid and have no force and effect.

16 c. If a majority of the legislatures of the member states
17 rejects a rule, by enactment of a statute or resolution in the
18 same manner used to adopt the compact within four years of the
19 date of adoption of the rule, then such rule shall have no
20 further force and effect in any member state.

21 d. Rules or amendments to the rules shall be adopted at a
22 regular or special meeting of the commission.

23 e. Prior to promulgation and adoption of a final rule or
24 rules by the commission, and at least thirty days in advance
25 of the meeting at which the rule will be considered and voted
26 upon, the commission shall file a notice of proposed rulemaking
27 in all of the following places:

28 (1) On the internet site of the commission or other publicly
29 accessible platform.

30 (2) On the internet site of each member state occupational
31 therapy licensing board or other publicly accessible platform
32 or the publication in which each state would otherwise publish
33 proposed rules.

34 f. The notice of proposed rulemaking shall include all of
35 the following:

1 (1) The proposed time, date, and location of the meeting in
2 which the rule will be considered and voted upon.

3 (2) The text of the proposed rule or amendment and the
4 reason for the proposed rule.

5 (3) A request for comments on the proposed rule from any
6 interested person.

7 (4) The manner in which interested persons may submit notice
8 to the commission of their intention to attend the public
9 hearing and any written comments.

10 *g.* Prior to adoption of a proposed rule, the commission
11 shall allow persons to submit written data, facts, opinions,
12 and arguments, which shall be made available to the public.

13 *h.* The commission shall grant an opportunity for a public
14 hearing before it adopts a rule or amendment if a hearing is
15 requested by any of the following:

16 (1) At least twenty-five persons.

17 (2) A state or federal governmental subdivision or agency.

18 (3) An association or organization having at least
19 twenty-five members.

20 *i.* If a hearing is held on the proposed rule or amendment,
21 the commission shall publish the place, time, and date of
22 the scheduled public hearing. If the hearing is held via
23 electronic means, the commission shall publish the mechanism
24 for access to the electronic hearing.

25 (1) All persons wishing to be heard at the hearing shall
26 notify the executive director of the commission or other
27 designated member in writing of their desire to appear and
28 testify at the hearing not less than five business days before
29 the scheduled date of the hearing.

30 (2) Hearings shall be conducted in a manner providing each
31 person who wishes to comment a fair and reasonable opportunity
32 to comment orally or in writing.

33 (3) All hearings will be recorded. A copy of the recording
34 will be made available on request.

35 (4) Nothing in this subsection shall be construed as

1 requiring a separate hearing on each rule. Rules may be
2 grouped for the convenience of the commission at hearings
3 required by this subsection.

4 *j.* Following the scheduled hearing date, or by the close
5 of business on the scheduled hearing date if the hearing was
6 not held, the commission shall consider all written and oral
7 comments received.

8 *k.* If no written notice of intent to attend the public
9 hearing by interested parties is received, the commission may
10 proceed with promulgation of the proposed rule without a public
11 hearing.

12 *l.* The commission shall, by majority vote of all members,
13 take final action on the proposed rule and shall determine the
14 effective date of the rule, if any, based on the rulemaking
15 record and the full text of the rule.

16 *m.* Upon determination that an emergency exists, the
17 commission may consider and adopt an emergency rule without
18 prior notice, opportunity for comment, or hearing, provided
19 that the usual rulemaking procedures provided in the compact
20 and in this section shall be retroactively applied to the rule
21 as soon as reasonably possible, in no event later than ninety
22 days after the effective date of the rule. For the purposes of
23 this provision, an emergency rule is one that must be adopted
24 immediately in order to do any of the following:

25 (1) Meet an imminent threat to public health, safety, or
26 welfare.

27 (2) Prevent a loss of commission or member state funds.

28 (3) Meet a deadline for the promulgation of an
29 administrative rule that is established by federal law or rule.

30 (4) Protect public health and safety.

31 *n.* The commission or an authorized committee of the
32 commission may direct revisions to a previously adopted rule
33 or amendment for purposes of correcting typographical errors,
34 errors in format, errors in consistency, or grammatical
35 errors. Public notice of any revisions shall be posted on

1 the internet site of the commission. The revision shall be
 2 subject to challenge by any person for a period of thirty days
 3 after posting. The revision may be challenged only on grounds
 4 that the revision results in a material change to a rule. A
 5 challenge shall be made in writing and delivered to the chair
 6 of the commission prior to the end of the notice period. If
 7 no challenge is made, the revision will take effect without
 8 further action. If the revision is challenged, the revision
 9 may not take effect without the approval of the commission.

10 11. *Oversight, dispute resolution, and enforcement.*

11 a. *Oversight.*

12 (1) The executive, legislative, and judicial branches
 13 of state government in each member state shall enforce this
 14 compact and take all actions necessary and appropriate to
 15 effectuate the compact's purposes and intent. The provisions
 16 of this compact and the rules promulgated hereunder shall have
 17 standing as statutory law.

18 (2) All courts shall take judicial notice of the compact
 19 and the rules in any judicial or administrative proceeding in a
 20 member state pertaining to the subject matter of this compact
 21 which may affect the powers, responsibilities, or actions of
 22 the commission.

23 (3) The commission shall be entitled to receive service
 24 of process in any such proceeding, and shall have standing to
 25 intervene in such a proceeding for all purposes. Failure to
 26 provide service of process to the commission shall render a
 27 judgment or order void as to the commission, this compact, or
 28 promulgated rules.

29 b. *Default, technical assistance, and termination.*

30 (1) If the commission determines that a member state
 31 has defaulted in the performance of its obligations or
 32 responsibilities under this compact or the promulgated rules,
 33 the commission shall do all of the following:

34 (a) Provide written notice to the defaulting state and other
 35 member states of the nature of the default, the proposed means

1 of curing the default, or any other action to be taken by the
2 commission.

3 (b) Provide remedial training and specific technical
4 assistance regarding the default.

5 (2) If a state in default fails to cure the default, the
6 defaulting state may be terminated from the compact upon an
7 affirmative vote of a majority of the member states, and all
8 rights, privileges, and benefits conferred by this compact may
9 be terminated on the effective date of termination. A cure of
10 the default does not relieve the offending state of obligations
11 or liabilities incurred during the period of default.

12 (3) Termination of membership in the compact shall be
13 imposed only after all other means of securing compliance have
14 been exhausted. Notice of intent to suspend or terminate shall
15 be given by the commission to the governor, the majority and
16 minority leaders of the defaulting state's legislature, and
17 each of the member states.

18 (4) A state that has been terminated is responsible for
19 all assessments, obligations, and liabilities incurred through
20 the effective date of termination, including obligations that
21 extend beyond the effective date of termination.

22 (5) The commission shall not bear any costs related
23 to a state that is found to be in default or that has been
24 terminated from the compact unless agreed upon in writing
25 between the commission and the defaulting state.

26 (6) The defaulting state may appeal the action of the
27 commission by petitioning the United States district court
28 for the District of Columbia or the federal district where
29 the commission has its principal offices. The prevailing
30 member shall be awarded all costs of such litigation, including
31 reasonable attorney fees.

32 *c. Dispute resolution.*

33 (1) Upon request by a member state, the commission shall
34 attempt to resolve disputes related to the compact that arise
35 among member states and between member and nonmember states.

1 (2) The commission shall promulgate a rule providing for
2 both mediation and binding dispute resolution for disputes as
3 appropriate.

4 *d. Enforcement.*

5 (1) The commission, in the reasonable exercise of its
6 discretion, shall enforce the provisions and rules of this
7 compact.

8 (2) By majority vote, the commission may initiate legal
9 action in the United States district court for the District
10 of Columbia or the federal district where the commission has
11 its principal offices against a member state in default to
12 enforce compliance with the provisions of the compact and its
13 promulgated rules and bylaws. The relief sought may include
14 both injunctive relief and damages. In the event judicial
15 enforcement is necessary, the prevailing member shall be
16 awarded all costs of such litigation, including reasonable
17 attorney fees.

18 (3) The remedies herein shall not be the exclusive remedies
19 of the commission. The commission may pursue any other
20 remedies available under federal or state law.

21 12. *Date of implementation of the interstate commission for*
22 *occupational therapy practice and associated rules, withdrawal,*
23 *and amendment.*

24 *a.* The compact shall come into effect on the date on
25 which the compact statute is enacted into law in the tenth
26 member state. The provisions, which become effective at
27 that time, shall be limited to the powers granted to the
28 commission relating to assembly and the promulgation of rules.
29 Thereafter, the commission shall meet and exercise rulemaking
30 powers necessary to the implementation and administration of
31 the compact.

32 *b.* Any state that joins the compact subsequent to the
33 commission's initial adoption of the rules shall be subject
34 to the rules as they exist on the date on which the compact
35 becomes law in that state. Any rule that has been previously

1 adopted by the commission shall have the full force and effect
2 of law on the date the compact becomes law in that state.

3 *c.* Any member state may withdraw from this compact by
4 enacting a statute repealing the same.

5 (1) A member state's withdrawal shall not take effect until
6 six months after enactment of the repealing statute.

7 (2) Withdrawal shall not affect the continuing requirement
8 of the withdrawing state's occupational therapy licensing board
9 to comply with the investigative and adverse action reporting
10 requirements of this compact prior to the effective date of
11 withdrawal.

12 *d.* Nothing contained in this compact shall be construed
13 to invalidate or prevent any occupational therapy licensure
14 agreement or other cooperative arrangement between a member
15 state and a nonmember state that does not conflict with the
16 provisions of this compact.

17 *e.* This compact may be amended by the member states. No
18 amendment to this compact shall become effective and binding
19 upon any member state until it is enacted into the laws of all
20 member states.

21 13. *Construction and severability.* This compact shall be
22 liberally construed so as to effectuate the purposes thereof.
23 The provisions of this compact shall be severable and if any
24 phrase, clause, sentence, or provision of this compact is
25 declared to be contrary to the constitution of any member
26 state or of the United States or the applicability thereof
27 to any government, agency, person, or circumstance is held
28 invalid, the validity of the remainder of this compact and the
29 applicability thereof to any government, agency, person, or
30 circumstance shall not be affected thereby. If this compact
31 shall be held contrary to the constitution of any member state,
32 the compact shall remain in full force and effect as to the
33 remaining member states and in full force and effect as to the
34 member state affected as to all severable matters.

35 14. *Binding effect of compact and other laws.*

1 *a.* A licensee providing occupational therapy in a remote
2 state under the compact privilege shall function within the
3 laws and regulations of the remote state.

4 *b.* Nothing herein prevents the enforcement of any other law
5 of a member state that is not inconsistent with the compact.

6 *c.* Any laws in a member state in conflict with the compact
7 are superseded to the extent of the conflict.

8 *d.* Any lawful actions of the commission, including all rules
9 and bylaws promulgated by the commission, are binding upon the
10 member states.

11 *e.* All agreements between the commission and the member
12 states are binding in accordance with their terms.

13 *f.* In the event any provision of the compact exceeds the
14 constitutional limits imposed on the legislature of any member
15 state, the provision shall be ineffective to the extent of the
16 conflict with the constitutional provision in question in that
17 member state.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill adopts the interstate occupational therapy
22 licensure compact.

23 The compact establishes a system whereby occupational
24 therapists and occupational therapy assistants licensed to
25 practice in one member state may practice in another member
26 state under a compact privilege without applying for a
27 license in that state. The compact imposes certain minimum
28 requirements on the licensure of occupational therapists and
29 occupational therapy assistants in member states. The compact
30 comes into effect upon adoption by 10 states.

31 The compact creates a commission to administer the operation
32 of the compact. The commission is an instrumentality of the
33 party states. The compact includes provisions relating to
34 the establishment and membership of the commission; powers
35 of the commission; meetings and voting requirements of the

1 commission; commission bylaws and rules; commission committees;
2 commission finances; records of the commission; compacting
3 state compliance; venue for judicial proceedings; qualified
4 immunity, defense, and indemnification; effective dates and
5 amendments to the compact; withdrawal, default, and expulsion;
6 severability and construction; and the binding effect of the
7 compact and other laws.